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yearly profits amounted to 60 million; the extensions proposed to 24 million; and the cash in hand and municipal bonds to 54 million. Action was brought to compel the declaration of an extra dividend. *Held*, that a decree ordering the defendant to distribute 19 million was proper. *Dodge et al. v. The Ford Motor Co. et al.* (1919, Mich.) 170 N. W. 668.

Although it is for the board of directors, and not for the stockholders, to decide whether dividends shall be declared, the directors may not arbitrarily refuse to divide profits. Whether there has been such an arbitrary refusal as calls for interference by equity is a question of fact, in the determination of which the amount of profits, of capital stock, and the nature of the business should be primarily considered. *Stevens v. United States Steel Corp.* (1905, Ch.) 68 N. J. Eq. 373, 59 Atl. 905 (profits 66 million, capital stock 1 billion; withholding not arbitrary); *Raynolds v. Diamond Paper Mills Co.* (1905, Ch.) 69 N. J. Eq. 290, 60 Atl. 941 (assets of corporation doubled; but the business required constant expansion). Under the facts of the principal case, the decision reached seems clearly right. It is to be commended as a protection of minority holders against the arbitrary acts of a numerically small majority.

EVIDENCE—DYING DECLARATIONS—"SHOT WITHOUT PROVOCATION" NOT AN OPINION.—In a prosecution for homicide, the state offered in evidence a dying declaration in writing signed by the deceased, that he was "shot without provocation." *Held*, that the declaration was admissible as a statement of fact. *State v. McNair* (1918, Utah) 178 Pac. 48.

Dying declarations, if admitted at all, should be admitted irrespective of the form in which they are made. The "opinion" rule should not be applied to exclude such a declaration when it is impossible to have the declarant present the facts in any other form. 2 Wigmore, *Evidence*, 1447. The principal case is believed sound as the declaration is predominantly a concise statement of facts—what the deceased did not do. To exclude it as an opinion would render valuable evidence inadmissible merely because of the words in which it came, by pure chance, to be expressed; a dying layman does not and cannot pick his phrases with reference to rules over which even lawyers fight. See (1918) 27 YALE LAW JOURNAL, 700; *cf.* (1917) 26 *ibid.* 505.

EVIDENCE—PEDIGREE—RELATIONSHIP—COMMUNITY-REPUTATION.—In an action to recover land, the sole question was whether the plaintiff was the brother of a decedent. The defendant, in refutation of this relationship, offered in evidence the general reputation in the community thereon. *Held*, that such reputation was inadmissible. *Ashe v. Pettiford* (1919, N. C.) 98 S. E. 304.

Community-reputation, though admissible to establish marriage, is not admitted to establish blood relationship. *Elder v. The State* (1899) 123 Ala. 35, 26 So. 213; *Lamar v. Allen* (1899) 108 Ga. 158, 33 S. E. 958; *Vowles v. Young* (1806, Eng. Ch.) 13 Ves. Jr. 140. The rule has been criticized, in cases where more direct methods of proof are unavailable. 2 Wigmore, *Evidence*, 1953. And a few states admit the evidence, either by statute or at common law. *State v. McDonald* (1910) 55 Ore. 419, 106 Pac. 444; *Carter v. Montgomery* (1875) 2 Tenn. Ch. 227; *Ewell v. The State* (1834, Tenn.) 6 Yerg. 364.

INTERSTATE COMMERCE—FEDERAL EMPLOYERS' LIABILITY ACT—WORKMEN'S COMPENSATION.—The decedent was employed by the railroad company as a laborer. While shoveling snow from the tracks, which were used for both interstate and intrastate transportation, he was struck by a passing train and later died from the injuries. His widow received an award under the New York Workmen's Compensation Act. *Held*, that the award must be set aside, as the employer was engaged in interstate commerce and the case was governed

by the Federal Employers' Liability Act. *New York Central R. R. v. Porter* (March 3, 1919) U. S. Sup. Ct. Oct. Term, 1918, No. 134.

The decision is another illustration of the difficulty of determining whether an act of an employee falls within interstate commerce. See *Flynn v. New York, S. & W. R. Co.* (1917, N. J. Sup. Ct.) 101 Atl. 1034. The test sought to be applied to each case is whether the employee at the time of the injury was engaged in interstate transportation or work so closely related to it as to be practically part of it. *Shanks v. Delaware, L. & W. R. R.* (1916) 239 U. S. 556, 36 Sup. Ct. 188. If the court decides he was, there can be no recovery under the state Workmen's Compensation Acts. *New York Central R. R. v. Winfield* (1917) 244 U. S. 147, 37 Sup. Ct. 546. See (1917) 27 YALE LAW JOURNAL, 135; (1916) 25 *ibid.* 497.

INDICTMENT—GRAND JURY—PUBLIC EXAMINATION OF WITNESSES.—The defendant filed a plea in abatement to an indictment charging him with receiving a stolen automobile, but was tried and convicted. The facts, stated in the plea and admitted by the commonwealth, were that while the cause was being heard by the grand jury one or more persons, witnesses in the case, were in the grand jury room while other witnesses were testifying. *Held*, that the plea in abatement was sufficient. *Commonwealth v. Harris* (1919, Mass.) 121 N. E. 409.

The court decided that the wrong complained of was the violation of a substantial right guaranteed by the Bill of Rights which made an indictment or presentment of a grand jury essential to the validity of a conviction in cases of prosecution for felonies; that an "indictment" must be found in pursuance of methods of grand juries established in England and Massachusetts, the oath of which is still to keep secret "the commonwealth's counsel, your fellow's, and your own." For a criticism of the grand jury system, see (1906) 15 YALE LAW JOURNAL, 178.

INSURANCE—FORM OF POLICY—NONCOMPLIANCE WITH STATUTE—EFFECT OF APPROVAL BY COMMISSIONER.—A statute providing for a standard accident and health insurance policy, required that any portion of a policy which purported "by reason of circumstances under which a loss is incurred, to reduce the indemnity . . . shall be printed in bold faced type and with greater prominence than any other portion of the text of the policy." The defendant issued to the plaintiff such a policy with the clause not printed in bold faced type. The insurance commissioner approved the form of the policy in question but warned the defendant of the above statute. The plaintiff was injured under circumstances covered by this clause which the defendant set up as a defense against payment of the whole amount of the policy. *Held*, that under the act the clause was no defense. *Williams v. Travelers' Ins. Co.* (1918, Wis.) 169 N. W. 609.

This decision seems sound, in view of the fact that the statute is unambiguous. The court applied the general doctrine that contemporaneous or executive construction of a statute is of no weight with the court when the terms and meaning of the statute are clear. See 36 *Cyc.* 1139, note 57; and 1142, note 73. This statute is an example of the ever growing legislation relative to insurance and the standardization of policies other than those covering death and fire. *Cf.* (1918) 28 YALE LAW JOURNAL, 193.

LIFE INSURANCE—ASSIGNMENT—CHANGE OF BENEFICIARY.—One Anderson took out two policies of life insurance with his wife as beneficiary. Both contained clauses setting out the formalities for changing the beneficiary and assigning the policies. Anderson assigned the said policies to the defendant as security for a loan. After his death the plaintiff, who was still named as